

change Senate rules, taking apart the most successful program we have had in this country's history, the Social Security Program, the American people are asking, as they answer these polls: Where is the leadership? Where will the leadership come from to put this country on track?

We do have crisis. It is not Social Security. We have a bona fide crisis in health care. Prescription drug costs, health care costs are going straight up, and no one is doing anything about it. We have a crisis in jobs. We have the biggest trade deficit in human history, and we are choking on it. We have massive numbers of American jobs moving every single day overseas. It is an epidemic because American workers are being told by their multinational employers: You either compete with 30-cent labor from China or we are sorry, it is over for you. That job goes to China for 30 cents an hour, working 7 days a week, 12 to 14 hours a day, often kids. We have an epidemic in jobs and trade. We have a serious problem with the largest budget deficits in the history of this country. Yes, that is a crisis.

Last week, we passed an \$80 billion emergency supplemental bill to pay for the costs in Iraq and Afghanistan and not one penny was paid for. The administration that requested it did not suggest it be paid for. Congress did not suggest it be paid for. Just add it to the debt. Send the soldiers to Iraq and bring them back later and have them pay for the debt.

So, yes, we have some crises. Health care, jobs, trade deficit, fiscal policy, energy. Drive to the gas pumps and ask yourself whether there is a problem there. And then we have the Crown Prince of Saudi Arabia going to Texas yesterday to explain how much additional oil they will pump in order to help us with our energy problem. Sixty percent of our oil comes from off our shores, much of it from troubled parts of the world—Saudi Arabia, Iraq, Venezuela, Kuwait.

If, God forbid, tomorrow the pipeline for sending oil to this country from those troubled parts of the world were ruptured, this country's economy would be flat on its back. We are held hostage by oil from off our shores to the extent we have to have the Saudis come to Texas, to the ranch, to explain to us how they are going to help us solve our problems.

The fact is, we do have crises. The operative question is, Where is the leadership? Where is the leadership? Where will it come from to deal with these issues? No, I am not talking about the nuclear option. That is a specious approach, one that will injure this Senate and injure this country. I am not talking about taking Social Security apart—exactly the wrong thing. I am talking about the leadership for things that really matter to American families.

When people are in their homes, sitting at their tables, having supper,

they talk about issues such as: Do I have a good job? Does it pay well? Do I have job security? Do grandpa and grandma have access to good health care? How about the kids, do they have access to doctors when they need it? Are our kids going to a school we are proud of? Do we live in safe neighborhoods? Those are things that are operative in the midst of families' interests about this country and where they live.

I hope very much the majority party will understand what the American people are telling them: Lay off the nuclear option. Accept that 95-percent support for judges nominated by this President, which is a pretty good record. Ninety-five percent, that is a good record. Accept and understand there is an opposition party. They, too, have rights. And accept and understand that compromise is not a bad word. Compromise recognizes that this democracy works when you have bipartisanship, when you reach across the aisle. That is what the 60-vote margin requires us to do, in my judgment. And answer the question, Where is the leadership? Just answer that question, Where is the leadership on issues that matter to American families? My hope is, in the coming days we will see some of that leadership both here in the Congress and also from this administration.

Last, and most importantly, let's not ever hear again that those with whom you disagree are not people of faith. What a shameless thing to be doing, to suggest that your political opponents are people who are not people of faith. This country is better than that. Political debate and dialog can be better than that. And the American people expect and deserve better.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

JUDICIAL NOMINATIONS

Mr. BUNNING. Mr. President, I rise to talk about the broken confirmation process for Federal judges. The Senate faces an unprecedented crisis and is failing the Constitution and the American people.

For the first time in the Senate's history, a minority of Senators is twisting the rules of the Senate to block the will of the majority. They are taking for themselves a power granted only to the President of the United States, the power of nominating judges. Just as disturbing is the fact that the minority is also threatening to shut down the Senate and the people's business if the majority acts to restore Senate tradition and fulfill our constitutional responsibility.

Make no mistake about it, we will restore the Senate tradition of taking up-or-down votes on the President's nominees. Hopefully, the minority will support the nomination process the Senate has practiced for more than 200 years and end the filibuster of judicial nominations. But if the majority of the

Senate must act to restore that tradition, we will do so.

Like many Senators, I spend a lot of time in my home State. I meet with constituents, give speeches to civic groups, and tour manufacturing plants. I have heard a lot about the war in Iraq and Social Security. People talk about gas prices and the economy, education, and health care. But the topic I hear about the most is the importance of confirming judges.

Last November, election day came and the American people spoke. President Bush won reelection by receiving the most votes ever cast for a Presidential candidate. A majority of the American people clearly endorsed his policies and his leadership. So when this Congress convened, I had high hopes that the crisis of judicial nominations was behind us.

I hoped the Senators who obstructed the Senate's business over the past 2 years realized the errors of their ways. After all, they lost seats in the Senate, and their minority leader also was defeated in the last election. I hoped we could turn to voting on President Bush's nominations to the Federal bench. I hoped we would return to the Senate tradition of giving nominees an up-or-down vote.

But it did not take long to realize that was not going to be the case. The minority proudly boasts about their filibustering the President's nominees. And if the majority acts to restore Senate tradition, they say they are going to expand their obstructionism to the entire business of the Senate and shut down the Government.

In article II, section 2 of the Constitution, the President is given the power to nominate judges. And upon advice and consent of the Senate, those nominees shall be placed on the bench.

So the President alone has the power to pick judges. And the Senate has the responsibility to render its advice and consent. That leads to the question of what does "advice and consent" mean? Fortunately, I am not a lawyer or a constitutional scholar. But I can read. And the Framers were pretty clear when they spoke.

First, they said the Senate as a whole is to give its advice and consent. When the Constitution speaks of the Senate as a whole body, it means a majority of the body. The Supreme Court has even stated as much.

Second, the Framers were pretty clear when they required more than a majority to act. For example, they required a two-thirds vote to amend the Constitution. They required a two-thirds vote to convict and remove from office an impeached President or Federal official. But even more telling, in the very same sentence of the Constitution that gives the Senate the duty to render advice and consent on nominations, the Framers also required a two-thirds vote to approve a treaty.

Now, if Framers meant that a super-majority vote was required to approve

a nominee, they would have clearly stated so. The supermajority is something the Constitution rejects for nominees, but that is exactly what the minority is saying when they filibuster a nominee. The minority is attempting to shift the balance of power away from the executive to the legislative branch. That is nothing more than rewriting the Constitution and the separation of powers the Framers designed more than 200 years ago.

What the Constitution does give every Senator a right to do is to express his or her opinion on a nominee and on the nominee's qualifications. That right is to speak in support of or in opposition to, and vote for or against a nominee. But no Senator has the right to prevent the whole Senate from voting on judicial nominees if they are unable to convince enough Senators to join in their opposition.

It is the duty of Senators to speak their objections and then vote yes or no. They may make the ultimate statement against a nominee by voting against him or her, but they may not prevent the rest of the Senate from giving the same ultimate statement. They must not block an up-or-down vote on the nominee. In fact, for more than 200 years, this is how the Senate has considered nominations: with an up-or-down vote. Debate has taken place, and then the nominee has been given a vote.

Never before the 108th Congress was a nominee with majority support denied a vote on the Senate floor. Never before the last Congress had the rules of the Senate been twisted to prevent such a vote. Previous Senates had not even considered filibustering nominees as an option. The rules do not explicitly prohibit it because Senate tradition has always been to allow the nominee, no matter how controversial, an up-or-down vote.

I remember a situation in the 106th Congress. A group of Republicans opposed several of President Clinton's nominees to the Ninth Circuit Court of Appeals. Some Senators wanted to do everything within their power to stop those nominees from reaching the bench. But the majority leader at the time, Senator TRENT LOTT, said this was wrong and filed cloture himself to move the nominations forward. Cloture was invoked, and both nominees were confirmed, with many more Senators opposing the nominations than cloture.

Today, President Bush's nominees, who all have majority support, are being denied a vote by a partisan filibuster led by the Democratic Party leadership. That is unprecedented and must come to an end.

Just years ago, many Senators who now champion the filibuster of President Bush's nominees stated that judicial nominees should receive an up-or-down vote. Some even advocated abolishing the filibuster altogether. In fact, 19 members of the minority who are still serving today voted to abolish all filibusters. And now some of those Sen-

ators are the loudest voices in the Senate for filibustering President Bush's nominees.

Some of my colleagues across the aisle have spoken out against filibustering nominations. For example, the senior Senator from New York said, in 2000:

We are charged with voting on the nominees.

The junior Senator from California said, in 1997:

It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.

The current minority whip said, in 1998:

If, after 150 days languishing on the Executive Calendar that name has not been called for a vote, it should be. Vote the person up or down.

And the senior Senator from Massachusetts said, in 1998:

We should resolve these disagreements by voting on these nominees—yes or no.

It is amazing how some easily forget their own words. Or maybe I should say, conveniently and selectively forget their own words.

Well, Republicans did give President Clinton's nominees an up-or-down vote. And now the minority should allow the same courtesy to President Bush's nominees.

Something we have heard over and over from the minority is how many of President Bush's nominees they have allowed to be confirmed. Let's talk about that. The minority likes to talk about all nominations, but all nominations are not equal in their impact within the judiciary. District court judges, while they are very important, are not as powerful as circuit court judges. President Bush's nominees to the circuit court have the lowest confirmation rate since the Roosevelt administration at 69 percent. President Clinton's circuit court nominees were confirmed at a rate of 77 percent, far above President Bush.

And not all circuit courts are equal. The DC Circuit is the most important. For that court, only 33 percent of President Bush's nominees have been confirmed. President Clinton's nominees were confirmed 78 percent of the time. Those differences are staggering and support the fact that our judicial confirmation system is broken because of the obstruction tactics of the minority.

Something must be done to fix this crisis. The solution can be up to our colleagues on the other side of the aisle. The simplest, fastest, and most desirable option is for the minority to agree to drop its obstructionist ways and allow an up-or-down vote on all judicial nominees. Unfortunately, that does not appear likely to happen.

Last Congress, the current minority leader was asked how much time his side needed to present their case against a nominee. He replied that there was "not a number in the universe" that they would accept.

So where does that leave us? The only answer I could see is to restore Senate tradition through a change in the rules of the Senate. Article I, section 5 of the Constitution reads:

Each House may determine the Rules of its Proceedings . . .

That means a majority of the Senate can act to change the rules. It is the responsibility of the majority of Senators who want to fulfill the Senate's constitutional duty to take action necessary to do so. Majority action to set the rules of the Senate is not unprecedented, nor is it an assault on the body.

It cannot be an attack on the Senate to act to restore 200-plus years of Senate tradition and allow the Senate to fulfill its constitutional obligations. The senior member of the Senate Democratic caucus himself has taken such action. Not once, not twice, but four times in a 10-year period, the senior Senator from West Virginia changed the application of the Senate rules through a majority vote, and all four times his actions were aimed at limiting Senators' rights to debate or filibuster. Senate history is filled with other examples of majority action resulting in a change to the Senate rules to restrict the filibuster.

Let me make something very clear: We are not talking about changing the legislative filibuster. In fact, the only Senators I have heard advocating elimination of legislative filibusters are on the other side of the aisle. Not only does the legislative filibuster have a place in the Senate's tradition and history, it is fundamentally different from the filibuster of judicial nominees. Writing legislation is solely within the power of the legislative branch, and the Senate is empowered by the Constitution to set its own rules.

In the case of nominations, the nominating power is the power of the President, and the Senate can only accept or reject those nominees. The purpose of a legislative filibuster is to force changes in the legislation. However, no number of Senators can amend nominations; we can only accept or reject them. There is a place for the legislative filibuster within the Constitution, but there is not for the filibuster of judicial nominations.

So I urge my colleagues on the other side of the aisle to take a deep breath and step back from the line in the sand that they have drawn. Offer us a compromise that guarantees each nominee a vote. Give us a set of time for debate. Let's take a vote. This issue is too important for the majority of the Senate to ignore anymore. We cannot and will not let a minority of this body rewrite the Constitution and destroy the Senate's traditions. We must vote, and we will vote.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. At this time, morning business is closed.

TRANSPORTATION EQUITY ACT; A LEGACY FOR USERS—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to the consideration of a bill (H.R. 3) to authorize funds for Federal aid highways, highway safety programs, and transit programs, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes for debate equally divided between the two leaders or their designees.

The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I am glad this day is here and that we are proceeding. I certainly encourage my colleagues to vote for this motion to proceed. I have every expectation that it will pass overwhelmingly. It seems as though we are always in a lot of controversy when we talk about a highway reauthorization bill. It doesn't come along very often—about every 6 years. In my tenure here, I have been involved in four of them. This is the fourth, and it is very significant.

It is interesting that even though there is a lot of criticism, when it gets down to the vote, the vote is always overwhelming. I remind my colleagues that last year's bill was at \$318 billion—that was contract authority—and there was about \$303 billion in guaranteed spending. It passed by a margin of 76 to 21. It is something I know people are interested in, but there are always problems. First of all, let me just say how this is bipartisan. My good friend, the ranking member of the committee, Senator JEFFORDS—back when the Democrats were in the majority, he was chairman—and I always agreed on these highway issues. It is kind of interesting that those of us who are conservatives really believe this is something we are supposed to be doing here—building infrastructure, building roads. I am particularly concerned that our State Of Oklahoma has not had its fair share. We have been ranked as having the worst bridges in the Nation.

Anyway, we have the bill up. It is going to be essentially the same bill as we had last year. We passed it out of committee. There is always a problem. Let me mention this because it needs to come out in the beginning. There

are two different ways to have a highway program. One is to do it—and essentially the other body does it more this way—by taking projects and adding them, and you pass this, so you know what projects will be there for the next 6 years. If you do that, then the people who are on the inside track would have the best opportunity to have theirs, and there is always an accusation of there being pork and having special projects.

In the Senate, we do it the hard way. We have a formula. When you have a formula, it takes into consideration so many different aspects. There is not one State that could not stand and say, my State is not being treated fairly because of this factor or the other factor. If you look at the formula factors, you have so many factors, such as interstate lane miles, vehicle miles traveled on interstates, contributions to the highway trust fund, the lane miles, principal arteries, VMT on principal arteries, diesel fuel, donee status, donor status, and low-income States. Oklahoma is a low-income State. That should be a consideration. You have a low-population State, such as the one of Senator BAUCUS, who has been in the leadership working on this issue. They still have to be able to drive even though they don't have a large population from which to get the funds. You have the high-fatality-rate States. You have a factor for the guaranteed minimum growth and the guaranteed minimum rate of return for donor States.

Oklahoma has been a donor State for as long as I can remember. I remember when we had written into the law we would get back 75 percent of what we have paid in. Now it is up to 90.5 percent. If we passed the bill last year at that funding level, it would be 95 percent. It looks like with the figure that we passed out of the committee on the floor that we will be considering today is one that will allow us to get to 92 percent.

I know the formula is not perfect. There are a lot of donor States that think they are not getting enough. A lot of donee States think they are not getting enough. The unhappy donee States complain about the growth rate, but they are ignoring the high rate of return. The unhappy donor States are complaining about the rate of return, but they are ignoring the high growth rates. I have seen unhappy donors trying to rewrite formulas. You cannot do that in a vacuum. I am sympathetic with unhappy States; however, they cannot change the formula in a vacuum and not affect every other State. One of the States is trying to do that right now, and that would adversely affect the rest of the States. It is something that is difficult to deal with. When we get to conference, there are things we can do that we cannot do on the Senate floor. Perhaps some of these things will be done.

With that, I will yield to Senator JEFFORDS, the ranking member on our Environment and Public Works Committee, for his comments.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I rise today to add my voice to those calling for the approval of the motion to proceed that we will soon vote on.

For more than 3 years Congress has been trying to pass a highway bill. Today we are taking one more step in the long road toward passage of this important legislation.

Mr. President, our Nation needs this bill. We need this bill because it will make our roads and transit systems more efficient and safer.

This year it is estimated that 33 percent of America's major roads are in poor or mediocre condition; 27 percent of America's bridges are structurally deficient or functionally obsolete; 37 percent of America's major urban roads are congested; and 42,000 Americans will die in traffic accidents.

We need this bill because a fully funded bill is good for the economy.

The Department of Transportation says that for every \$1 billion of Federal spending on highway construction nationwide, 47,500 jobs are generated annually; and that every dollar invested in the Nation's highway system yields \$5.40 in economic benefits because of reduced delays, improved safety and reduced vehicle operating costs.

We need this bill to maintain our current highways and bridges than ever before, while demand for our roadways only increases.

The Federal Highway Administration says that 52 percent of highway funds spent by States went to preserving highway systems while just 19 percent went to building new roads and bridges.

At the same time, traffic congestion costs American motorists \$69.5 billion a year in wasted time and fuel costs and we spend an additional 3.5 billion hours a year stuck in traffic.

This bill isn't perfect. In fact, I think it needs additional funding. The White House has suggested an overall funding level for surface transportation of \$284 billion over 6 years.

This despite the President's own Transportation Department saying we need at least \$300 billion to simply maintain the status quo, and something well above that level to make progress on conditions and performance.

Thankfully, calls for increased funding have come from Republicans, Democrats and Independents; Members of the House and Senate, Governors and Mayors. But we will address the funding issue in due time.

Today we must get cloture on this bill and move forward.

Once again, I would like to thank the Senate leadership on both sides for their support of this bill.

I would also like to pay tribute to Chairman INHOFE and Senators BOND and BAUCUS for their support and cooperation in helping get us to where we are today.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?